IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 154 OF 2006

Smt. Yamini Sawant
Major, Indian National
Resident of H. No.105,
Arcar Curca, Tiswadi,
Goa. ... Petitioner

versus

1. The Assistant Engineer,
   Sub Division I, Works
   Division III, P.H.E.(N),
   PWD, St. Inez, Panaji,
   Goa.

2. The State of Goa
   Through its Chief Secretary,
   Secretariat, Panaji-Goa.

3. Dr. Pandurang V. Kamat
   Ghanekar, Residing at
   Shantinagar, Ponda, Goa. ... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. S. S. Kantak, Advocate General with Mr. M. D. Salkar, Additional Government Advocate for the Respondent Nos.1 and 2.

Mr. J. P. Mulgaonkar, Advocate for the Respondent No.3.

CORAM : SMT. RANJANA DESAI &
N. A. BRITTO, JJ.

DATE : 26TH JUNE, 2006.

ORAL ORDER(PER SMT.RANJANA DESAI, J.)

The petitioner has prayed for an order directing the respondents to forthwith install water connection in the petitioner's house. The case of the petitioner appears to be that her father was a mundkar in the property bearing survey no.40/9 wherein House No.105, Arcar, Curca, Tiswadi-Goa is situated. According to her, her father has purchased the plot on which the house has been constructed from the landlord around 20 years ago. On or around 1-2-2005 the petitioner had applied for installation of water connection in her premises. Respondent No.1, the Assistant Engineer, Sub Division I, Works Division III, P.H.E.(N), P.W.D., St. Inez, Panaji, Goa, approved the proposal of giving water connection to the petitioner on 2-3-2005 and water connection was released in favour of the petitioner on 26-4-2005. According to the petitioner, she has obtained N.O.C. from the Village Panchayat of Curca, Bambolim and Talaulim. On 3-3-2005, the petitioner was allotted a meter by respondent

no.1 on payment of fees amounting to Rs.1030/-. On 26-4-2005, the work of installation of her water connection was left incomplete by respondent no.1 because the landlord objected to the same. The petitioner thereafter corresponded with respondent nos.1 and 2 requesting them to install the water connection. She sent a legal notice dated 25-1-2006 calling upon them to install water connection. Respondent No.1 replied to the legal notice sent by the petitioner stating that since there was objection from the landlord for laying of pipelines in his property, the water connection could not be installed. The petitioner has, therefore, approached this Court.

2. We have heard the learned Counsel appearing for the parties. The learned Counsel for the petitioner contended that the petitioner is residing in the said house since the year 1994. He drew our attention to a Gazette Notification whereby the Goa Public Health Act, 1985 has been amended and Section 94A has been added. He pointed out that as per Section 94A(4)(c) providing of water supply connection, electricity supply connection or any other essential service, to any person shall not in any way be taken to have regularized, validated or legalized

any such structure, premises, house, hut, area or occupation of or by any such person. He then drew our attention to Office Memorandum issued by the Government dated 22-11-2004 which requires that an application made by a person for water connection shall be accompanied by an Affidavit/Undertaking stating that the grant of water/electricity/sewage connection being purely from the angle of health, the applicant will not claim any right including right of possession, ownership etc. and that the applicant shall not use the fact of having water/electricity/sewage connection under the provisions of the Goa Public Health Act, 1985 against the Government or the owner of the house/land in any proceedings whatsoever. The learned Counsel contended that water is an essential amenity. The petitioner is in the house since the year 1994. Respondent No.1 has already released water connection. He submitted that in the circumstances, respondent no.3 cannot obstruct the installation of water connection. He submitted that in view of the amendment made to the Goa Public Heath Act, 1985 no right will be created in favour of the petitioner on account of installation of water connection. Moreover, the petitioner will be now required to give an affidavit or undertaking to the effect

that she will not claim any right including the right of possession, ownership etc. on the basis of water connection. He, therefore, submitted that in the circumstances of the case respondent no.1 be directed to install water connection in the petitioner's premises.

3. As against this, the learned Counsel for respondent no.3 has relied on the Judgment of the Supreme Court in **P. R. Murlidharan and others** v. **Swami Dharmananda Theertha Padar and others**((2006) 4 SCC 501). He contended that the petitioner's case is totally fraudulent. She has no legal right to seek mandamus from this Court and in any case mandamus cannot be issued against the third respondent, he being a private party. The learned Counsel drew our attention to the affidavit-in-rejoinder filed by the petitioner and contended that the stand taken by her is contradictory and in any case she can adopt the alternative remedy provided under the provisions of the Goa Mundkar(Protection from Eviction) Act, 1975 and Rules 1977.

4. As to whether the petitioner is in possession of the house standing on survey no.40/9 and if she is in possession

whether she is legally entitled to the said house cannot be decided by us in our writ jurisdiction. If respondent no.3's case is that the petitioner has no legal right to the said house, it will be open to him to approach the Civil Court for such reliefs as he may be advised. We make it clear that nothing said by us in this order should be interpreted to mean that we have expressed any opinion on the rights of the petitioner or respondent no.3. We are today concerned only with water supply. Water supply is an essential amenity. If the first respondent has already released the water connection respondent no.3 cannot deprive her of it till the rights of the parties are decided. As per the amendment made in the Goa Public Health Act, 1985, any water connection installed cannot be taken to have regularized, validated or legalized any structure, premises, house, hut etc. in which such water connection is installed. Besides, a person applying for such water connection has to give an undertaking to the effect that he will not claim any right including right of ownership on account of installation of water connection. In our opinion, these provisions completely protect respondent no.3. Unless the rights of the petitioner are legally adjudicated upon and declared by the Civil Court, on account of water connection

installed in the premises occupied by her she cannot claim any rights over the house in survey no.40/9.

5. So far as the judgment of the Supreme Court in P. R. Murlidaran's case(supra) is concerned, in our opinion, it is not applicable to the facts of the present case. In that case, the Supreme Court was dealing with a situation where Police protection was ordered to be granted to the petitioner on the ground that he was the Madathipati. There was dispute about the petitioner's status. In these circumstances, the Supreme Court observed that mandamus cannot be sought for directing protection in respect of property, status or right which remains to be adjudicated upon and when such adjudication can only be done in a properly instituted suit. In this case, we have not opined on the rights of the parties. They would be determined in an appropriate proceeding which may be adopted by the parties and the water connection installed by the first respondent would be subject to the orders that may be passed in that proceeding. What distinguishes the present case from facts in Murlidharan's case is that here we are dealing with supply of water. In our opinion, water connection should be installed in

the petitioner's premises only because water is an essential amenity and that connection will be subject to the verdict of the appropriate forum which will decide the rights of the parties. Hence, the judgment of the Supreme Court in Murlidaran's case will not be applicable to the facts of this case.

6. The learned Counsel for respondent nos.1 and 2 have stated that respondent nos.1 and 2 have no objection in giving water supply to the petitioner. They have stated that in fact, water connection has already been released but could not be installed because of objection from respondent no.3.

7. In view of the above and considering the nature of rival claims, in the peculiar facts and circumstances of this case, we direct the first respondent to install water connection which they have already released in the house of the petitioner. Water is an essential amenity and it is this consideration which has been weighed with us while passing this Order. We make it clear that the installation of water connection will not give rise to any rights in favour of the petitioner. All contentions raised by respondent no.3 are kept alive and respondent no.3 will be at

liberty to raise them in appropriate proceedings. We have not expressed any opinion on the rights of the parties. As it is the case of respondent no.3 that pipeline is being led through his property and his rights are prejudicially affected undoubtedly respondent no.3 will be entitled to adopt appropriate remedy against the petitioner and the respondents. We again make it clear that water connection will be subject to the orders that may be passed in any proceedings which may be initiated by respondent no.3. Petition is disposed of.

SMT.RANJANA DESAI, J.

N. A. BRITTO, J.

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